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THE DIRECT PRIMARY IN ILLINOIS

BY WALTER CLYDE JONES

Member of State Senate of Illinois

Illinois has had an arduous task in its efforts to enact a valid direct primary law. Unusual conditions exist in Illinois which have made the problem peculiarly difficult.

SPECIAL CONDITIONS IN ILLINOIS

In the first place, Illinois contains at one corner a large city having more than one-third the total population of the state. The political conditions and methods of party organization in Chicago are wholly different from those of the smaller cities and communities of the state. What is suitable for the country districts in the form of a primary law is in many respects unsuited to the metropolitan conditions of Chicago, and *vice versa*. The country districts, to a great extent, were at the beginning of the movement for direct primaries favorable to a primary which was direct, as distinguished from a delegate-convention system, and were favorable to such a primary of the plurality type, in which a plurality of the votes, not necessarily a majority, should nominate. In Chicago, those active in politics and familiar with party organization were opposed to direct primaries, and particularly antagonistic to a direct primary of the plurality type. They favored a delegate-convention primary system, and in any event believed that a direct primary, if inevitable, should provide for majority nominations.

There was thus a distinct cleavage between the city of Chicago and what we may term the country districts, and this attitude was reflected not only in the party leaders of the respective communities but in the members of the legislature as well.

Another special condition giving rise to difficulties was the principle of minority representation which prevails in Illinois and which is found in no other state in the Union. This system of minority

representation provides for a cumulative vote for members of the House of Representatives of the General Assembly, and this principle of minority representation, with its cumulative voting plan, has presented problems in connection with the drafting of a direct primary law which, in view of the attitude of our Supreme Court, have seemed almost insuperable.

Immediately following the Civil War the northern half of Illinois which had been abolitionist in sentiment, was solidly Republican and the southern half, which had been pro-slavery in sentiment, was solidly Democratic. In consequence, the Democrats of the northern half of the state and the Republicans of the southern half of the state were without representation in the legislature. It was proposed to remedy this condition by the principle of minority representation, which was written into the Constitution of 1870. In accordance with this plan, the state is divided into fifty-one senatorial districts, from each of which one Senator and three Representatives are elected. The senatorial district is not subdivided into three representative districts, but the three Representatives are elected at large from the entire senatorial district.

In voting for Representatives the elector may mark his ballot so as to cast one vote for each of three candidates, or one and one-half votes for each of two, or three votes for one. Casting three votes for one candidate is called, in the vernacular of Illinois politics, "plumping" the votes. The ballot at the final election contains the names of all the candidates of the various parties and in front of each name is a square. If a cross be marked in the square opposite one name, three votes are to be counted for that candidate; if crosses are marked in the squares in front of two names, one and one-half votes are to be counted for each of the two candidates; if crosses are marked in the squares in front of three names, one vote is to be counted for each of the three candidates.

In practice, the majority party in a senatorial district will usually nominate two candidates and the minority part will nominate one candidate. The electors of the minority party by "plumping" their votes for the one minority candidate, are practically sure of electing him. The electors of the majority party, by casting one and one-half votes for each of the two majority party candidates, are practically certain of electing both. A district would have to show an overwhelming majority in favor of one party to warrant the nomination of three candidates by the majority party. In exceptional

cases, where a district is very evenly divided and may swing in either direction, each of the two major parties would be justified in nominating two candidates; but districts where such conditions prevail are exceptional. Inasmuch as three Representatives are to be elected from each district, the two candidates nominated by the majority party and the one candidate nominated by the minority party are practically sure of election. The final election thereby becomes perfunctory. The nomination is equal to an election. This is one of the defects of this minority system and is a potent cause of bad government.

This principle of minority representation seems to have solved the problem for which it was devised. For many years past there have been Democratic districts in the northern half of the state and Republican districts in the southern half of the state. This minority system has outlived its original usefulness and remains in our political system, like the vermiform appendix of the human body, a cause of disturbance and disorder.

The Supreme Court of Illinois has held that a primary election is an election, as that term is used in the Constitution, and must therefore conform to the provisions of the Constitution respecting elections. Inasmuch as the Constitution provides that the cumulative plan of voting must be provided in the election of Representatives for the General Assembly, the Supreme Court, by an extension of its logic has ruled that a primary election must likewise provide for cumulative voting. On the face of it cumulative voting at a primary election is absurd, and in practical operation the results produced are disastrous to good government. Inasmuch, however, as the Constitution and the Supreme Court are inexorable on this point, cumulative voting must be provided in our direct primary laws, unless the people shall amend the Constitution to eliminate the principle of minority representation or the cumulative voting feature.

The Illinois legislature has to date enacted four direct primary laws: Law No. 1 was enacted in the regular session of 1905; law No. 2 was enacted at the special session of 1906, called for that sole purpose; law No. 3 was enacted at the adjourned session of 1907–8 following a recess at the conclusion of the regular session of 1907; law No. 4 was enacted at the special session of 1910 called for that and other purposes.

Laws No. 1, 2 and 3 have been declared invalid by the Supreme Court on the ground that they violated provisions of the Constitu-

tion. Law No. 4 has yet to be fully tested by the courts, although the Supreme Court in October last refused to nullify the provisions of law No. 4, which authorize the senatorial committee to determine the number of candidates for Representative which the political party shall nominate.

Law No. 1. This was a dual instrument. In effect there were two acts in one. The first 64 sections of the act provided a system of primaries for counties under 125,000 inhabitants, while the remaining sections provided a different system of primaries for counties having more than that population. Cook County was the only county falling in the latter class. County central committees outside of Cook County were given authority to determine whether the county officers should be nominated by delegates in convention or by a direct popular vote, and, if the latter, whether by majority or plurality vote. In Cook County the county officers were nominated by convention. In Cook County a popular vote was provided for mayoralty and aldermanic candidates.

The candidate for Governor, and congressional and legislative candidates were given a popular vote. The popular vote thus applied to a few only of the officers to be nominated, and the vote constituted merely an instruction to the delegates. In counties outside of Cook the candidate receiving the highest vote in the county had the delegates from the whole county instructed to vote for him in the nominating convention. A majority of the delegates was necessary to nominate. The majority of the delegates from each county had the power to release the instruction after the first ballot. In Cook County, the election precincts were grouped into delegate districts consisting of from two to seven precincts, according to population. The candidate for the office of Governor and for congressional, legislative and municipal offices, receiving the highest number of votes in the delegate district had the delegates from that district instructed for him in the convention. A majority of the delegates was necessary to nominate. The majority of the delegates of the district had the power to release the instruction after the first ballot. An advisory vote on United States Senator was provided.

The dual character of the law represented a conflict and a compromise between the divergent views of Chicago and the country districts, the former leaning toward the direct primary and the latter clinging to the delegate system. Cook County was insured convention nomination of its numerous county officers, while the outside counties

were afforded a means whereby they could secure a direct nomination of county officers, if they so desired. A popular vote throughout the state was provided for the office of Governor but not for other state offices, and for members of Congress and the General Assembly.

This law was held unconstitutional by the Supreme Court,[1] principally on the ground that it was unequal in its application that an election law, in view of the Constitution, must apply equally and uniformly throughout the state, and that the same law on this subject applicable to Cook county should be applicable to the rest of the state, and *vice versa*. The law was held void on a number of other grounds as well. This law was declared unconstitutional while the primary campaign in the spring of 1906 was in progress.

Law No. 2. The Governor immediately called a special session and law No. 2 was enacted. The primary election, which ordinarily is held in April, was postponed to the following August. The statewide primary election of 1906 was held under this law, and before the law could be attacked in the courts the final election was held in November, 1906, and the officers thus elected were duly installed in office.

Then followed the regular session of 1907, during which the Supreme Court held its decision upon primary law No. 2 in abeyance. In the fall of 1907 the Supreme Court rendered a decision[2] holding law No. 2 invalid because of the violation of constitutiohal provisions. Law No. 2 was similar to law No. 1 except that it applied uniformly throughout the state. Provision was made for subdividing the state into delegate districts each consisting of a number of precincts. A popular vote was provided as to state, congressional and legislative officers. Candidates were required to file a petition signed by a specified number of electors. The names of candidates to be voted upon were printed on a so-called "official ballot." The names of delegates were printed upon a separate unofficial ballot called the "delegate ballot." The delegates from each delegate district were instructed to vote on the first ballot for the candidate receiving the highest number of votes in the district. A majority of the delegates was necessary to nominate. If no nomination occurred on the first ballot, the instructions were by law released and the delegates were free to select the candidate. An advisory vote was provided for the office of United States Senator and for certain other offices.

[1] *People* v. *Election Commissioners*, 221 Illinois Reports, page 9.
[2] *Rouse* v. *Thompson*, 228 Illinois Reports, page 522.

One of the principal grounds for holding law No. 2 unconstitutional related to the subject-matter of minority representation. The law provided that the delegates to the senatorial convention should be instructed upon the first ballot to vote for the candidate for Representative receiving the highest popular vote at the primary. One candidate was thus entitled to nomination by popular vote, if his plurality was sufficiently large and properly distributed so that he received the instructed votes of a majority of the delegates to the senatorial convention. If he failed to receive a majority, then the instructions were discharged and the delegates were free to make the selection. The popular vote thus applied to but *one* of the three candidates for Representative, to-wit, the candidate receiving the highest number of votes. The remaining candidates of the party for Representative were to be nominated by the delegates to the senatorial convention. The delegates were to decide how many candidates the party should nominate and should make the additional nominations, if any. If, for instance, the party were the majority party which had decided to nominate two candidates, then the one additional Representatives was to be selected by the delegates. If the minority party presented but one candidate, this candidate would be the one receiving the highest popular vote, provided the delegates thus instructed constituted a majority of the convention; if not, the selection would be made by the delegates.

The Supreme Court held that this provision was unconstitutional because it discriminated between the several candidates for Repsentative, giving one an opportunity to win by securing the highest popular vote, while the other candidates were required to submit to the decision of the delegates of the convention. There were other defects pointed out in the law which were of minor consequence.

At the termination of the regular session in May, 1907, a recess was taken until the following October for the purpose of giving consideration to legislation having to do with the proposed Lakes-to-the-Gulf deep waterway. While this adjourned session was in progress the decision of the Supreme Court invalidating law No. 2 was rendered, and the legislature thereupon undertook the task of enacting a third direct primary law.

Law No. 3. The decisions of the Supreme Court had indicated the futility of attempting to devise a satisfactory law based upon the retention of delegates and conventions. Accordingly, a bold move in advance was taken by the legislature, after several months of con-

troversy, and in January, 1908, a state-wide plurality, direct primary law was enacted covering all state, congressional, legislative, county, judicial and municipal offices. An advisory vote on United States Senator was included. University trustees were excluded because women have a right to vote for these offices, thus placing these offices in a class by themselves. Presidential electors and national delegates were omitted from the law. A state convention was provided to select electors and national delegates, to nominate Univeristy trustees and to adopt a platform. The delegates to the state convention were selected by the precinct committeemen of the respective counties, and these precinct committeemen were elected at the primary.

The Constitution of Illinois provides that all laws enacted by the General Assembly shall become effective on the first day of the following July, unless an emergency clause be attached, in which case the bill must receive a two-thirds vote of each house. The margin in favor of the enactment of the direct primary law was so small that the two-thirds vote necessary for the inclusion of an emergency clause was impracticable. In order to meet the situation and provide for the primary election of 1908, the primary election was fixed for the following August, a little more than a month after July 1st, when the law would become effective. A provision was inserted in the law to the effect that the county clerks and election commissioners—whose duty it is to make up the ballots for the final election in November—should not print upon the ballots for the final election the names of any candidates unless they should be duly nominated in accordance with the newly enacted primary law. In this manner, any attempt to hold rump conventions and make nominations prior to the going into effect of the new law was anticipated and prevented.

The state-wide primary election of 1908 was held under this law, and before an attack could be made thereon in the courts the final election was held in November, 1908, and the officers elected thereat duly installed. Thereafter the regular session of 1909 was held during the months from January to June. During this period the Supreme Court held in abeyance its decision with respect to the validity of law No. 3.

It was during this session that the deadlock arose respecting the election of a United States Senator. Law No. 3 provided for an advisory vote upon United States Senator. The law was silent as to whether the advisory vote should be construed as an instruction by senatorial districts or a state-wide instruction. There were three

principal Republican candidates for United States Senator who submitted their candidacies to the people at the primary election in August, 1908—Senator Hopkins, Congressman Foss and ex-Senator Mason. Hopkins received a plurality, but not a majority, of the votes in the entire state, although he lost his senatorial district.[3] Hopkins carried a majority of the senatorial districts in the state. Foss and Mason each carried a number of senatorial districts.

Immediately upon the convening of the legislature the question arose as to the proper effect which should be given to the advisory vote. The Hopkins adherents contended that inasmuch as Hopkins had received a plurality of the popular vote in the state at large he was entitled to the nomination. The Foss and Mason adherents contended that the law properly contemplated that the vote of the senatorial district should constitute the instruction, and that the members of the legislature were instructed to vote for the candidate receiving the plurality of the votes in their respective senatorial districts.

In view of this conflict of opinion, a number of the Republican members of the legislature—particularly those whose districts had instructed for Foss and Mason, and some members who personally were antagonistic to Hopkins and who were unwilling to recognize the binding effect of the advisory vote in any particular—refused to enter the Republican caucus on United States Senator. The result was that no caucus nominee was possible.

The Democratic members of the legislature voted in joint session for Mr. Stringer, the Democratic candidate who had received the plurality of the vote of the state, while the Republican members, who were in the majority in the legislature, divided between Hopkins, Foss and Mason. A deadlock was thus established which persisted throughout the session. There was some swaying of votes back and forth between these candidates, and there were complimentary votes for various outside candidates, but no one of these candidates was able to secure a majority of the votes necessary to elect. Toward the end of the session William Lorimer, whose candidacy had not been submitted to the people at the primary election, was elected by a by-partisan union of fifty-three Democrats and fifty-five Republicans. Thus ended the deadlock which had continued throughout the session.

Total vote: Hopkins, 168,385 Foss, 121,110; Mason, 86,596. Senatorial districts carried: Hopkins, 33; Foss, 16; Mason, 2.

Charges of corruption and bribery in the election of Senator Lorimer have been made and these charges have been the subject of investigation by the United States and by the courts.

After the adjournment of the regular session in 1909 the Supreme Court held law No. 3 invalid.[4] There were two principal grounds in view of which the law was held invalid: The first related to the provision concerning registration; the law provided means whereby electors who had moved subsequent to registration might swear in their votes, but failed to make provision whereby an elector who had become of age subsequent to the last registration day might swear in his vote. There were several other instances in which electors might be entitled to vote, by virtue of naturalization, etc., which were not provided for by the law. On this ground the law was held unconstitutional.

The second ground was that the law failed to provide for cumulating the votes for Representatives in the General Assembly. The court held that inasmuch as a primary election was, in the opinion of the court, an election, as that term is used in the Constitution, and inasmuch as the Constitution provides that at all elections provision must be made for cumulating the votes in voting for Representatives in the General Assembly, the law was void in that it made no provision for such cumulative voting.

Law No. 3 provided that the senatorial committee, the members of which were elected at the primary, should determine for the party how many candidates for the lower house the party should nominate. The senatorial committee of the majority party in practice usually decided that two should be nominated, and the committee of the minority party usually decided that one should be nominated. The elector was entitled under law No. 3 to cast one vote for each candidate for the lower house. If, for instance, he were an elector of the majority party which had decided to nominate two candidates, he could cast one vote for each of two candidates; if an elector of the minority party, which had decided to nominate but one candidate, he could cast one vote for any one candidate of the minority party. Cumulative voting at the primary election was not permitted.

It was considered by the legislature, after mature deliberation, that there was no propriety in providing cumulative voting at the primary election, because the primary election was a contest within the party;

[4] *People* v. *Strassheim*, 240 Illinois Reports, page 279.

it was not a contest between parties, as at the final election. Cumulative voting, therefore, which is an aid to minority representation, seemed not only foreign to the nature of a primary election, but absurd and meaningless in such a connection. Accordingly, the legislature, in its wisdom, made no provision for cumulative voting for members of the lower house. The Supreme Court held that law No. 3 was invalid because it failed to provide for such cumulative voting.

Law No. 4. In the special session of 1910 law No. 4 was enacted. This law is similar to law No. 3, except that a cumulative vote is provided for Representatives in the General Assembly, and the provision as to registration was amended to meet the requirements of the Supreme Court. Inasmuch as a two-thirds vote necessary to include an emergency clause could not be obtained, provision was make, as in law No. 3, for the holding of the primaries after July 1, 1910, when the law would in natural course go into effect. The primary elections, which ordinarily would have been held in the spring of 1910 were thus postponed until September 15, 1910. The state-wide primary elections were held at this date, and thereafter the final election was held in November 1910.

In view of the difficulty of enacting a primary law which would satisfy the conflicting statements of the Supreme Court in its several decisions relating to the subject of minority representation, it was deemed advisable by the legislature to subdivide the direct primary law and enact it in two separate measures, one to relate to all offices except legislative offices and the other to relate exclusively to the legislative offices. Accordingly, two laws were enacted, one relating to the offices in general and the other confined to the nomination of members of the Senate and the House of the General Assembly and the election of senatorial committeemen.

Subsequent to the primary election and prior to the final election of 1910 court proceedings were instituted before the Supreme Court to test the validity of the law relating to legislative candidates in view of the provision therein authorizing the senatorial committee to fix and determine the number of candidates for the lower house to be nominated by the party.

The legislature, in enacting the law, was confronted with the difficulty of arranging for the determination as to the number of candidates which a political party should nominate. Two alternative plans presented themselves, (1) the senatorial committee, the members of which were elective under the primary law, could be given the power

to suggest or determine the number of candidates for the lower house to be nominated by the political party, whether one, two or three; or (2) the matter could be submitted to the voters at the primary election and the voters could decide, by proper marking of the ballot, whether the party with which they were affiliated should nominate either one, two or three candidates for the lower house.

The practical objections to the latter plans seemed so serious that, after mature deliberation, the first plan was adopted. The law as enacted provides that the senatorial committee shall fix and determine by resolution the number of candidates which its party should nominate and this resolution shall be duly certified to the proper official who makes up the primary ballot. This official shall thereupon print upon the ballot the decision of the senatorial committee, so that the voter may know in marking his ballot the number of candidates which the senatorial committee of his party has decided should be nominated.

The Supreme Court in a former decision,[5] had held that the determination of the number of candidates the party should nominate was a political and not a legislative matter. In consequence, it seemed that the delegation of such a power to the senatorial committee, which was a legally elected body, should not be objectionable from a constitutional standpoint.

The alternative plan of allowing the voters to determine the number of candidates seemed seriously objectionable from a practical standpoint. Inasmuch as the voter would be required to mark his ballot to express his views as to the number to be nominated at the same election at which he was required to mark his ballot for the nomnation of candidates for the lower house, the elector could not know when he marked his ballot how many candidates were to be nominated. It could not be known until the ballots were counted whether a majority of the electors of the party favored the nomination of one, two, or three. It is manifest that an elector would naturally mark his ballot very differently if but one candidate were to be nominated from the manner in which he would mark it if two candidates, or three, were to be nominated. Such a plan would require the elector to mark his ballot blindly, without knowing what policy as to the number of candidates to be nominated would be adopted by the voters.

There were these two alternatives presented, and it was believed

[5] *Rouse* v. *Thompson supra.*

by capable lawyers in the legislature that either was constitutional, although there were reasons urged against the constitutionality of both these provisions. A majority of the legislature finally decided that it was safer and more practicable to adopt the plan of permitting the senatorial committee to make the decision or suggestion as to the number of candidates to be nominated, particularly in view of the express statement of the Supreme Court in the Rouse case that this was a political and not a legislative function.

It was urged upon the Supreme Court in the proceedings which were instituted after the primary election and prior to the final election of 1910, first, that the separate primary law relating to the members of the legislature was invalid as a whole; and second, that the provision authorizing the senatorial committee to make the determination or suggestion was void and should be disregarded without invalidating the entire law. If this latter theory were adopted by the court, then each party would be held at the primary election to have nominated three candidates, if there were that many candidates upon the ballot, who had received votes. The Supreme Court, without rendering a written opinion, dismissed the petitions, thus permitting the action of the senatorial committees to stand. The petitions filed by defeated candidates sought writs of mandamus to compel the officials to print on the ballot the names of the three candidates receiving the highest number of votes at the primary. The final election was thereafter held and most of the officers elected at the final election was have thus far been installed in office.

Since the election the Supreme Court has handed down its written opinion.[6] Four of the seven judges hold the law constitutional but disagree as to their reasons for so doing. One of these holds that the law authorizes the senatorial committee to actually decide as to the number of candidates for the lower house to be nominated, that this is a political and not a legislative function and therefore properly delegated by the legislature. Three of the majority hold that the law is valid, because when properly construed it merely authorizes the senatorial committee to suggest, not fix, the number to be nominated, and that therefore three will be nominated if there are that many on the ballot. The three judges constituting the minority hold that the law delegates to the committee the power to actually fix, not merely suggest, the number of candidates, that this is a legis-

[6] *People ex rel. Espey* v. *Deneen* (December, 1910).

lative, not a political function, and that, therefore, the law is void. All of which leads the advocates of direct primary reform to throw up their hands in dismay and to look to a constitutional amendment eliminating cumulative voting as the only relief from an intolerable condition.

Thus it will be noted that notwithstanding the fact that the Supreme Court has successively declared three of the four direct primary laws invalid for constitutional reasons, the state-wide biennial primaries in the years 1906, 1908 and 1910 have, by the persistency of the direct primary advocates in the legislature, been duly held under direct primary laws. Illinois has thus had the benefit of direct primaries in its elections for the past four years.

A brief reference to several features of the Illinois law, the practical operation thereunder, and some proposed amendments which have been urged, may be of interest.

UNITED STATES SENATORS

The present law provides for an advisory vote with respect to candidates for United States Senator and specifies that the vote of the state at large and not the vote of senatorial districts shall be considered in determining the advisory vote. Law No. 3 was silent as to whether the vote of the state at large or the vote by senatorial districts should constitute the instruction.

Illinois has had two senatorial elections since it has had an advisory vote on United States Senator. In the primary of 1906 there were two candidates for the Republican nomination, Senator Cullom, and ex-Governor Yates. Yates announced that if he did not receive the majority of the votes at the primary election he would withdraw his candidacy. Having failed to secure a majority of the votes, he withdrew his candidacy, so that Senator Cullom was re-elected by the legislature without opposition. In the primary election of 1908, in which Senator Hopkins was a candidate for re-election and was opposed by Congressman Foss and ex-Senator Mason, the candidates did not pledge themselves in advance to abide by the popular vote. This fact had much to do with the production of the deadlock. Had the candidates unequivocally pledged themselves in advance to abide by the popular vote, the withdrawal of Foss and Mason, as did Yates after the primary of 1906, would have probably resulted in the immediate re-election of Senator Hopkins.

There is a well-defined sentiment in Illinois looking toward the amendment of our primary law along the line of the Oregon plan of direct election. This plan contemplates the amendment of the election laws so that the candidates of the respective parties receiving the highest number of the votes of the party at the primary election shall have their names printed on the ballot at the final election, so that the voters may register their choice as between the party candidates The plan contemplates a system of volunatry pledges by members of the legislature to abide by the popular vote. In view of the recent unfortunate experience of Illinois in the matter of electing a United States Senator, the movement for the popular selection of United States Senators has received great impetus.

PARTY BALLOT

While law No. 4 was under consideration by the legislature a determined attempt was made to write into the law the feature of the so-called "blanket" ballot. It was urged that the practice followed in some other states should be adopted, wherein the elector is privileged to take into the booth the ballots of all political parties and there in secret choose and mark the particular party ballot which he may wish to vote. This blanket ballot plan was vigorously opposed and finally defeated.

It was the position of the majority that a primary election is properly a contest within the political party. It affords a forum wherein factions of the party and individuals therein may submit to the electors of the party the party controversies. There would seem to be no more reason in justice why a Democrat should be permitted to participate in settling party matters of the Republican party, and *vice versa,* than that a Methodist should be permitted to participate in selecting the managing officers of a Baptist congregation. It is true that some electors who are independent in politics and who refuse to affiliate with a party may be prevented from participating in the party primaries, but that fact is of minor importance. An independent is free to affiliate with any party of his choice, so far as concerns the primaries, without in any manner interfering with his freedom of action at the final election. He may affiliate, let us say, with the Democratic party at the primary and yet be free to vote the Republican or any other ticket at the final election, or to split his vote between the several parties at the final election, as he may see fit.

The Illinois law provides that at the first election thereunder, in September, 1910, the elector can choose the political party with which he will affiliate. Having made his choice by participating in the primary election of that party, he can not participate in the primary election of any other party within a period of two years. The elector makes his choice as to party affiliation, and is bound thereto for a period of two years. At the expiration of the two years he is free to renew or change his affiliation as he may desire.

It was believed by the majority in the legislature, after considerable controversy, that this feature of the primary law was wise public policy. It prevents members of one party from interfering with the activities of other parties. It frequently happens that there is a lively contest in one political party at a time when there is little or no contest in the other party, in which event certain members of the latter party would, if not prohibited, cross party lines. Such action is manifestly unfair and unjust to the electors of the party. Accordingly, the Illinois law has rigid provisions making it an offense for an elector who has affiliated himself with one party to participate in the primary elections of any other party during a period of two years thereafter.

PARTY LEADERS

Law No. 3 and law No. 4 have made the party leaders elective. The Supreme Court of the state has sustained this feature of law No. 3, which has been duplicated in law No. 4. The court held that it was within the power of the legislature to make the party officers elective and to provide for their election in the same act which provides for the nomination of candidates for office.

The law provides for the election of a state committeeman from each of the congressional districts in the state. It provides also for the election of senatorial committeemen. In dealing with the subject of county committeemen and city committeemen a difficult problem has been presented. The only political division which is uniform thorughout the state, so far as concerns elections, is the precinct. The counties and cities throughout the state are divided into election precincts. Inasmuch as the Supreme Court has held that provisions respecting primary elections must be uniform throughout the state, it has been found impracticable thus far to devise any subdivision of the state as a basis for the election of county and city committeemen except the election precinct, which would be satisfactory to both Cook

county and the smaller counties. Accordingly, it has been provided in the primary law that a precinct committeeman shall be elected from each election precinct within the state. The precinct committeemen of the county constitute the County Central Committee. The precinct committeemen within the confines of any city constitute the City Central Committee.

In the counties outside of Cook county the number of committeemen makes a committee of a size such that it is easily workable. The precinct committeemen present a quite different problem in Cook county. In Cook county there are 1,480 precincts, thus making a County Central Committee so great in numbers as to be unworkable as a whole for managing purposes. If the precincts be grouped throughout the state into larger precincts for the purpose of electing county committeemen the number in Cook county could be reduced to a workable size, but in the smaller counties the number would be too small. In Cook county the precinct committeemen select chairmen of the respective ward delegations, who constitute the real political leaders. These political leaders, as it will be seen, are not under the direct control of the electors. It has been proposed to amend the primary law to provide for the election of the ward leaders in large cities, such as the City of Chicago. It was considered unwise to make such provision in law No. 4. because a difficult constitutional question as to uniformity is raised thereby which might invalidate the entire law. By making this provision in an amendatory act this separate act might be made to stand or fall on the question of its own constitutionality, without affecting the main primary law. While therefore, the election of precinct committeemen has been found in practice to give satisfactory results in popularizing the party leaders in counties outside of Cook county, serious problem is still presented in Cook county in the matter of the election of the real party leaders. The election of precinct committeemen while the ward committeemen are not elective under the primary law, removes the ward committeemen, who are the actual political leaders, from the direct control of the electors within the party. An amendment to the primary law to correct this defect is being insistently urged upon the legislature.

ORGANIZATION SLATES

In Cook county the organization leaders have adopted the practice of preparing a "slate" of candidates which they propose to support and submitting the same to the voters prior to the primary election. The strength of the organization leaders is then brought to the support of the slate of candidates as thus announced and the attempt is made, usually with success, to secure the endorsement of the slate candidates at the primary election.

This slating of candidates by the organization leaders has led to considerable controversy and difference of opinion in Cook county. The propriety of such a slate is still an unsettled question. There are those who contend that it is a violation of the spirit of the primary law for the party leaders to submit such a slate; there are those, on the other hand, who contend that this is the inevitable consequence of a direct primary law, and particularly in a metropolitan center of population such as Chicago, and that the preparation of such a slate is a proper, commendable and necessary practice.

Justice Hughes, while Governor of New York, in the drafting of the direct primary law which he urged upon the New York legislature, took the position that the preparation of such an organization slate was legitimate and proper, and he went to the extreme of making it mandatory, and giving the slated candidates precedence upon the ballot and the benefit of a designation upon the ballot showing that the particular slated candidates had been recommended by the organization. He thus recognized a trait of human nature and an apparently inevitable consequence of the direct primary principle when applied to a populous district or a large electorate. By means of such a slate the party ticket may be balanced as to nationality and geography. In a city like Chicago, where there are so many different nationalities, each having more or less cohesion in itself, it is deemed unwise for a political party not to recognize nationalities; and, moreover, in view of the fact that there is local pride in the several sections of the city, it is considered essential to a successful ticket that the geography of the city should be recognized in the make-up of a party ticket. If the primary election should be left without control and direction by the party leaders, it is argued that political chaos would result.

As a result of these considerations and by virtue of the efforts of the political leaders of each party to shape the nominations at the

primary election in a manner to harmonize factional differences and produce the strongest possible ticket for their party, the organization slate has resulted.

When the party organization is divided into two or more distinct factions which cannot coalesce in the presentation of a single slate, each faction may present its own slate, and this has happened in Cook county politics since we have been operating under the direct primary principle. In that event there will be two or more slates and each faction of the party organization will endeavor to nominate the candidates of its particular slate. The party primary thus affords a forum where this battle may be waged and the electors decide the result. The direct primary, however, tends to force the organization leaders to settle their factional differences, if that be at all possible, prior to the primary election. It enforces upon them the desirability of coalescing the different factions of the organization and the presentation to the voters of a single organization slate. In order to accomplish this result it is to the interest of the different factions in the party to settle their differences by compromise, and the organization slate frequently represents not only a balance as to nationality and geography but also a balance as to the factional controversies within the party.

When the party organization thus presents a unified slate, it has been found difficult to prevent the success of the organization slate at the primary. The direct primary, however, requires the political leaders to show their hands prior to the primary election, and in this respects the primary law has been advantageous. Under the old delegate convention system the people went to the polls at the primary election and selected delegates and subseqeuntly the delegates named in the convention the candidates upon whom the party leaders had agreed. The electors thus had prctically no choice in the matter. Under the direct primary the party leaders must act first. They must present their slate for the approval of the electors and the electors are free to accept or reject the recommendations. The leaders are confronted with the importance of presenting the best possible timber available, from a vote-getting standpoint, otherwise their recommendations are in danger of being rejected wholly or in part by the electors.

If the slating of candidates is to become the accepted practice certain collateral improvements should be made in our primary system to insure the slating of ideal candidates and the defeating of objectionable candidates when slated by the organization.

In the first place, the amendatory law above mentioned should be passed providing for the direct election of the ward leaders, as distinguished from the precinct committeemen, so that the real leaders who have to do with the framing of the organization slate shall speak with authority from the electors themselves. If the electors have a direct voice in the choice of their real political leaders, they should be willing to give substantial consideration to the recommendations of their thus duly constituted leaders. If the leaders do not make good recommendations, then when they present their candidacies for re-election as political leaders they should be held to account and should be defeated. A movement, therefore, in the correct solution of this branch of the problem would seem to be in the direction of popularizing the political leaders, bringing them closer to the electors, so that they will be in fact true leaders of the public opinion within the party and then their recommendations as to slated candidates will be of value and should, if good recommendations are made, be endorsed by the people at the election.

Another movement bearing upon the organization slate is that of civil service reform. One of the reasons why the organization slate has great chances of success is because it has behind it the thousands of precinct workers who hold political appointive positions. The organization thus has at hand an army of disciplined regulars who are more than a match for the private citizens who as amateurs participate in precinct activities. By the extension of the civil service rules thus reducing the number of regulars at the polls and increasing the relative number of those who participate as amateurs and not as professionals, the power of the organization will be minimized and a more exact balance will be struck.

A third movement which will have a bearing upon the matter of organization slates is the development of civic bodies of various kinds which are gradually acquiring strength as moulders of public opinion and which will pass upon the personnel of the organization slate, throwing their influence for or against the slate as a whole or individuals thereof according as the organization leaders have acted wisely or unwisely in their recommendations. The newspapers, as moulders of public opinion, exercise and will continue to exercise a very substantial influence upon the activities of the organization leaders in preparing their slates and securing their adoption.

A fourth aid along this line would be the adoption of the plan of publicity pamphlets, printed and delivered to each elector by the

government. The system has been used with success in Oregon. Each candidate is allowed a certain number of pages in which are printed his campaign arguments. A means of educating the voters would thus be provided which would increase the opportunities of candidates who might oppose the organization slate.

A fifth movement is the reform of the electorate itself. But a small percentage of the voters have thus far availed themselves of the primary. The larger the number of voters who participate at the primaries, the more difficult is the task of the organization leaders to elect their slate. The movement, therefore, to popularize the primary and induce the electors to participate therein tends to minimize the influence of the organization.

It will be seen, therefore, that in a congested center of population like Chicago, and in a state or county where the political conditions are complex and questions of nationality and geography and factional differences must be given consideration, the preparation of an organization slate, or the preparation of several slates by different factions of the organization, or the preparation of slates by civic organizations or other moulders of public opinion, may safely be considered legitimate activities under the direct primary law, but amendments should be made to the statutes of the state to safeguard the rights of the electors and public activity should develop such institutions for the moulding of public opinion as will hold the organization leaders to the proper channels of activity.

EXPENSE OF PRIMARY ELECTIONS

One of the principal objections which has been urged against the direct primary law as evidenced by its working in Illinois is the expense to which candidates are subjected. Undoubtedly many candidates have expended large sums of money at the direct primaries; more often these large sums have been unwisely and unnecessarily spent. There is great opportunity for the wasting of money at primary elections and there are candidates who have undoubtedly availed themselves of the opportunity. The consensus of opinion seems to be that abuses along these lines should be prevented by statute. They are the proper subject-matter of a corrupt practices act which should carefully regulate and control expenditures by candidates and their supporters. Inherently there is no reason why a direct primary should be any more expensive than a primary held under the old dele-

gate convention system; in fact, statistics would probably show that as much or more money has been spent by candidates under the old system when compared with the expenditures under the new system.

Take, for instance, a state-wide campaign in the state of Illinois. A candidate for Governor and his supporters would find it necessary under the old system, to secure the support of the organization leaders in each county and furnish funds for the proper conduct of the campaign in such counties. If the organization leaders were hostile in was necessary to enlist the activities of some minority faction or new leaders and conduct a campaign throughout the county in an effort to secure the delegates. All of this requires money, and it is a well-known fact that in some gubernatorial campaigns in Illinois enormous sums of money have been spent by candidates under the old convention system.

Under the direct primary system the candidate may, if he cannot secure the support of the county leaders, and must even if he does, appeal directly to the voters of the county. A single speech in the county by the candidate has been known to secure the county for the candidate. The expense of such a campaign may be so regulated as to be very much less than the expense of accomplishing similar results under the delegate convention system. A substantial movement is in progress in Illlnois looking toward the enactment of a corrupt practices act which will adjust this matter of expense in conducting primary, as well as final, elections.

In order to equalize candidates from the standpoint of wealth the publicity pamphlet feature, above mentioned, which has been adopted with success in Oregon, is receiving consideration. The government issues a pamphlet which is forwarded prior to the election to each elector. Each candidate is privileged, upon the payment of a prescribed sum, to a certain number of pages of this pamphlet, in which he may print the campaign material which he may wish to circulate. This pamphlet is printed and distributed at public expense, and a forum is thus provided for all candidates at a small cost which enables them to appeal to each elector and set before him the issues of the campaign. The publicity pamphlet does away with the necessity of mailing campaign literature and expenses due to other forms of publicity.

PETITION.

The present law provides that the candidate, as a condition precedent to having his name printed on the primary ballot, shall file a petition signed by a specified number of electors of his party. For most offices the petition must contain one-half of one per cent of the party electors in the district. The names of candidates for each office are to be printed upon the primary ballot in the order in which the petitions are filed, either with the Secretary of State or the County Clerk, as the case may be. This leads to a disgraceful scramble to get an early position in the filing llne. Men have been known to stand in line the day and night preceding the day upon which filing of petitions has been authorized, in order to get a favorable position on the ballot. In a recent instance an official with grim humor opened and filed all petitions which had been received by mail before accepting petitions from those standing in the filing line. This manner of determining the order in which the names shall be printed on the ballot is eminently unsatisfactory. An attempt was made in the enactment of law No. 4 to provide a more equitable method of determining the position on the ballot, but no plan could be devised which would meet the approval of a majority of the legislature. In consequence, it was finally found necessary to revert to the plan above mentioned, which had been the plan adopted in law No. 3.

Efforts will undoubtedly be made to amend the law to correct this defect. It has been proposed to arrange the names alphabetically, but objection has been raised to this plan becaise it gives an advantage to a candidate who by the accident of birth may have acquired a name commencing with one of the early letters in the alphabet. It is contended by some that the position of first place on the ballot is, in connection with many offices, equal to an advantage of 10 to 15 per cent over subsequent positions.

It has also been proposed to provide for the rotation of the names upon the ballot, one name occupying the position of precedence upon a given number of ballots and then the type being shifted so as to bring another name at the top of the list, and so on, the type being shifted frequently enough so that each name will occupy the position of prominence upon practically as many ballots as the name of any other candidate. Where there are but few offices to be filled and but a few candidates, such a plan of rotation seems to be feasible. In Cook County, however, where there are upwards of fifty offices to

be voted upon at the primary, and a number of candidates for each office, and where the county, congressional, senatorial, sanitary district and other political divisions overlap, it has been found impracticable thus far to devise any system of rotation which seems at all feasible.

It has also been proposed to provide a system for placing the names of the candidates upon the ballot by lot. It has been proposed that when the candidate files his petition a card should be made out containing his name and the office which he seeks, and that prior to the primary election, on a specified date, certain designated public officials, in the presence of any candidates who may wish to attend, shall shuffle the cards in a suitable receptacle and have them withdrawn in an impartial manner in the presence of those in attendance and in a manner to prevent favoritism. Such a plan would insure the placing of the names upon the ballot by chance and each candidate would have an equal opportunity for precedence of position. This plan would seem to be the most feasible and equitable of any which have been proposed.

In the Hughes law presented to the New York legislature it was proposed to give the candidates receiving the endorsement of the organization precedence upon the ballot. It would seem that this is an unnecesary advantage, as the endorsement by the political organization in itself usually carries a very substantial advantage to the candidate. To equalize opportunities, therefore, the organization candidate should rather be handicapped than aided by position upon the ballot.

SHORT BALLOT

The experience with the direct primary in Illinois has demonstrated the urgent importance of reducing the number of candidates on the ballot. In Cook County at the biennial primary election there are more than fifty offices to be filled. It is apparent that the elector cannot familiarize himself with the personnel of the candidates for these numerous offices. The result is that the elector must follow the endorsement of the political organization, or some faction, or the endorsement of some civic organization or newspaper. If the direct primary principle is to become an established institution, it would seem essential that steps should be taken to substantially reduce the number of elective offices. By thus reducing the number of offices public attention can be more readily centered on the fewer

offices remaining, and the qualifications of the various candidates can be more readily determined.

There are many offices, such as Clerks of Court and the like, which are purely ministerial and in the conduct of which there are no questions of policy which would make it advisible that such offices should be elective. The Constitution and the statutes should be amended to make these offices appointive, thus removing them from the ballot. All judicial offices should likewise be removed from the ballot at which partisan officers are to be elected. The judiciary should be non-partisan and a separate judicial election should be provided in order that the judiciary may be completely divorced from partisian politics. The Circuit Court judges in Cook County are elected at a judicial election held in June. The Superior Court judges, the County judge Probate judge and the Municipal Court judges are elected at the regular biennial election. All of these judicial offices should be removed to the separate judicial election. The primary for the nomination of judicial candidates, if they are to be nominated at a primary, should likewise be a separate and distinct judicial primary. There seems to be no reason, however, why the nomination of judicial candidates should be made at a primary. Candidates for judicial office should be nominated by petition, thus further removing the judiciary from partisan activities.

The removal of the judicial candidates to a separate election is thus a movement in the direction of the short ballot. The making of purely ministerial offices appointive, instead of elective, and thus removing them from the ballot, is a further movement in the same direction.

The experience with the direct primary in Illinois has shown it to be a marked improvement over the delegate-convention system. No human institution is perfect, and defects have developed in connection with the direct primary, particularly as applied to a populous center like Chicago. Substantial amendments to the primary law and to collateral statutes are necessary to improve the working of the primary principle. Some of the more important improvements have been indicated above. It would seem probable, in view of the experience to date, that the great mass of the voters prefer the direct primary to the former system of delegate nonimations. In this former system the voter had little or no influence upon nominations. In a direct primary he has, if he will avail himself of the opportunity, a forum wherein he may exercise his influence. Before the direct primary is

fully effective the voters must avail themselves of the opportunity to participate in the primary election. This is a matter which cannot be corrected by statute but only by personal reformation. I believe that if a vote of the electors of the state were taken they would overwhelmingly vote that the direct primary system in Illinois has been a marked success.